

SEP 27 2007

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

HERBERT GILBERT,

Plaintiff - Appellant,

and

UNITED STATES OF AMERICA, ex rel.,

Plaintiff,

v.

BAY AREA RAPID TRANSIT; et al.,

Defendants - Appellees.

No. 04-15100

D.C. No. CV-99-04534-MHP

MEMORANDUM^{*}

Appeal from the United States District Court
for the Northern District of California
Marilyn H. Patel, District Judge, Presiding

Submitted September 24, 2007^{**}

Before: CANBY, TASHIMA, and RAWLINSON, Circuit Judges.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Herbert Gilbert appeals pro se from the district court's order denying leave to file a motion under Rule 60 of the Federal Rules of Civil Procedure in his action filed under the False Claims Act, 31 U.S.C. § 3729 *et seq.* We have jurisdiction under 28 U.S.C. § 1291. We review the application of a vexatious litigant order for an abuse of discretion. *See Moy v. United States*, 906 F.2d 467, 469 (9th Cir. 1990). We affirm.

In a prior appeal, this court affirmed the district court's imposition of a pre-filing review order requiring Gilbert to seek permission to file any future motions or actions relating to the same claims. *See United States ex rel. Gilbert v. Bay Area Rapid Transit Dist.*, No. 02-16342 (9th Cir. 2003) (unpublished memorandum disposition). As the allegations in the instant application are covered by the pre-filing review order, we affirm the district court's denial of Gilbert's petition for leave to file a Rule 60(b) motion.

The district court did not abuse its discretion when it denied Gilbert's motion for reconsideration because he did not identify any new evidence, change in law, clear error, or manifest injustice. *See Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993).

Gilbert's outstanding motions are denied.

The defendants' request for judicial notice of the supplemental excerpts of record filed in *United States ex rel. Gilbert v. Bay Area Rapid Transit Dist.*, No.

04-16854 (9th Cir. 2005) (unpublished memorandum disposition), is granted.

AFFIRMED.